**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH, AT JAIPUR**

**S. B. CRIMINAL MISC. PETITION NO. 142/1998**

**GHANSHYAM SONI**
**v**
**STATE OF RAJASTHAN & ANR.**

**Date of Judgment:** **JULY 26th, 2007**

## Hon'ble Mr. Justice R. S. Chauhan

Mr. M.K. Kaushik for the petitioner.
Mr. B.K. Sharma, Public Prosecutor.
Mr. Rajat Ranjan for the non-petitioner No.2.

By Court:

REPORTABLE

A dispute between the two neighbours, a minor assault, allegedly caused by the petitioner to the complainant, Smt. Bina Devi, has kept this case alive for almost two decades. The petitioner has challenged the order dated 14.2.90 passed by the Addl. Chief Judicial Magistrate, No.4, Jaipur City, whereby the learned Magistrate had accepted the negative Final Report ('F.R.' for short) and simultaneously directed the statement of the complainant to be recorded under Section 200 of the Criminal Procedure Code ('the Code' for short).

The brief facts of the case are that on 14.1.89 Smt. Bina Devi, the non-petitioner No.2, had lodged a written report at Police Station, Manak Chowk, wherein she claimed that in the morning when she came out of her bathroom, she saw the petitioner trying to take out the door of her house. She immediately told him not to do so. Upon her protest, he entered her house and punched over the nose. She cried out in pain. Upon hearing her cries, her son rushed to her rescue. However, the petitioner's two sons, namely, Tillu and Montu and his son-in-law also joined the fray. She further alleged that her son Hemant and her two daughters, Sarita and Suman and her husband were also assaulted by the petitioner and his family members. On the basis of this report a formal FIR, FIR No. 24/89, for offences under Sections 482 and 323 IPC was registered. However, after a thorough investigation the police submitted a negative F.R. before the concerned court. Meawhile the complainant also submitted a complaint before the learned Magistrate. Since an FIR and a complaint about the same incident co-existed, the learned Magistrate, while invoking his power under Section 210 of the Code, directed the

police to submit its report. Therefore, the police again submitted a negative F.R., before the learned Magistrate. While considering the negative F.R., the complainant and her counsel were present before the court. The complainant protested against the negative F.R. and told the court that the police had submitted the negative F.R. Vide order dated 14.12.89 after hearing the complainant, the learned Magistrate accepted the negative F.R. in collusion with the petitioner. However, simultaneously he directed that the statement of the complainant and her witnesses should be recorded under Section 200 and 202 of the Code. Subsequently, her statement and the statement of her witnesses were recorded and on the basis of the statement of the complainant and her witnesses the learned Magistrate took cognizance of the offences under Sections 323 and 452 IPC. Since the petitioner was aggrieved by the said order he filed a revision petition before the Addl. District & Sessions Judge No.8, Jaipur City, Jaipur. However, vide order dated 12.6.97 the learned Judge dismissed the said revision petition. Hence, this petition before this court.

Mr. M.K. Kaushik, the learned counsel for the

petitioner, has strenuously argued that once a negative F.R., has been accepted by the learned Magistrate in the presence of the complainant, then the Magistrate is precluded from recording the complainant's statement and of his/her witnesses under Sections 200 and 202 of the Code. He is further precluded from taking cognizance of the offences on the basis of the statement of the complainant and his/her witnesses recorded under Section 200 and 202 of the Code. In order to support his contention, he has relied upon the case of Vishnu Mourya Vs. State of Rajasthan & Anr. (1989 (2) WLN 141). Therefore, once the learned Magistrate had accepted the negative F.R., vide order dated 14.12.89, simultaneously he could not direct the recording of the statement of the complainant and her witnesses. Moreover, on the basis of their statement, the learned Magistrate could not have taken the cognizance. According to the learned counsel acceptance of a negative F.R., is a judicial order passed by the competent court. Therefore under Section 362 of the Code once the court has signed the order  it does not have the power to alter or review the same. Therefore, once the negative F.R. Has been

accepted, taking of the cognizance by the same court tentamounts to reviewing the order accepting the negative F.R. - the power to review the order accepting the negative F.R., does not lie with the Court. Therefore, the impugned order is contrary to Section 362 of the Code.

On the other hand, Mr. Rajat Ranjan, learned counsel for non-petitioner No.2, has cited the case of Gopal Vijay Verma vs. Bhuneshwar Prasad Sinha & Ors. (1982 Cr.L.R. (S.C.) 510). The learned counsel has cited the said case in order to argue that even if the Magistrate has accepted the negative F.R., he is not precluded from subsequently taking cognizance of the offence on the basis of the statement of the complainant and his/her witnesses. He has also brought it to the notice of this court that the case of Gopal Vijay Lverma (supra) has been followed by this court in the case of Chandan Mal Jain & Ors. Vs. State of Raj. & Ors. (1998 (2) RCC 83) and in the case of Janki Prasad Vs. State of Raj. & Ors. (1991 RCC 584).

We have heard both the learned counsel for the

parties as well as the learned Public Prosecutor, have combed through the record, and have considered the case law cited at the ar.

This cases raises a very interesting legal issue whether after accepting a negative F.R., the learned Magistrate still continues to have the power to take cognizance on the basis of the statement of the complainant and his/her witnesses recorded under Section 200 and 202 of the Code of not ? In the case of Gopal Vijay Verma (supra) the Apex Court has observed as under :-

> " The High Court was clearly in error in thinking that the Magistrate could not take cognizance of a case upon complaint because he had earlier refused to take cognizance of the case on a police report".

As pointed out by the learned counsel for the non-petitioner No.2, the said principle has been followed by this court in the case of Chandan Mal Jain & Ors (supra) and in the case of Janki Prasad (supra). However, in the case of Vishnu Mourya (supra) this Court has distinguished the case of Gopal Vijay Verma (supra). The facts of Vishnu Mourya's case are

identical to that of the present case : in both the cases when the negative F.R., was accepted by the learned Magistrate the complainant was present and was heard by the court prior to the acceptance of the negative F.R. In the case of Vishnu Mourya this court held that once a negative F.R. has been submitted and a protest petition or a complaint co-exist, then the Magistrate has two options before him : firstly, he shall hear the complainant or his counsel and notwithstanding his contentions accept the negative F.R., or secondly, he shall direct that the complainant's statement under Section 200 and his/her witnesses statement under Section 202 of the Code shall be recorded and then pass the necessary order of cognizance. But, according to this court the learned Magistrate cannot adopt a third mode that of accepting the negative F.R. on one hand and simultaneously directing that the statement of the complainant and of his/her witnesses should be recorded under Section 200 and 202 of the Code. Such a method would be alien to the scheme of the Code. Therefore, in a similar factual matrix, the order directing the recording of the statements of the complainant and of his/her witnesses was

quashed.

In the present case, the cognizance order is passed on an order which is legally unsustainable. Therefore, the cognizance order is legally invalid.

In the result, this petition is allowed and the cognizance order dated 14.2.90 qua the petitioner is quashed and set aside.

( R.S. CHAUHAN ) J.

MRG.